



BILLING CODE 3510-BW

DEPARTMENT OF COMMERCE

15 CFR Part 4

[Docket Number: 150902802-5802-01]

RIN 0605-AA39

Freedom of Information Act and Privacy Act Regulations, Nomenclature Change

AGENCY: Department of Commerce (Commerce).

ACTION: Final rule.

SUMMARY: The Department of Commerce (Department) amends its regulations under the Freedom of Information Act (FOIA) and the Privacy Act (PA) to reflect an organizational change in the Department's Office of General Counsel (OGC). Specifically, this action removes from the provisions on FOIA appeals and the PA all references to the position of Assistant General Counsel for Administration, and replaces them with references to the new "Assistant General Counsel for Litigation, Employment, and Oversight." The Department's OGC recently eliminated the position "Assistant General Counsel for Administration," and this amendment updates the rules to implement that change. The rule also reflects that the Office of the Assistant General Counsel for Litigation, Employment, and Oversight will be conducting FOIA appeals and responding to requests for corrective action or review under the PA for the Department. This action merely makes a nomenclature change; the change has no substantive impact to the public, because the OGC has in the past and will continue to handle the FOIA and PA actions described above.

DATES: This action is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The final rule is available at www.regulations.gov, or by contacting the Department of Commerce: Room 1854, 1401 Constitution Avenue, N.W., Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: Joseph Bartels, 202-482-3084.

SUPPLEMENTARY INFORMATION: This rule modifies the sections of the Department of Commerce’s FOIA and PA regulations addressing appeals of denials of requests under FOIA and requests for review or corrective action under the PA by updating the name and address of the office in the OGC that decides appeals. The current FOIA regulations state that the Assistant General Counsel for Administration (AGC-Admin) decides all appeals from FOIA requests (except those made to the Office of the Inspector General, or to the AGC-Admin). The regulations also require appellants to address requests for corrective action or review for overly delayed responses under the PA to the AGC-Admin.

The Department of Commerce’s Office of General Counsel (OGC) has recently reorganized its offices, and the position of AGC-Admin no longer exists. In its place, the Assistant General Counsel for Litigation, Employment, and Oversight has been delegated the authority from the General Counsel to make final decisions on appeal of initially denied requests for records under FOIA. *See* Department Administrative Order 205-12, sections 4 and 5.

Accordingly, this rule amends part 4 of title 15 of the Code of Federal Regulations to remove references to the now non-existent AGC-Admin, and replace it with the term “Assistant General Counsel for Litigation, Employment, and Oversight.” This action is merely a nomenclature change, and does not modify or revise in any substantive way the Department of Commerce’s FOIA or PA regulations, or FOIA or PA requirements.

Classification

Executive Order 12866

This rule is limited to agency organization, and therefore is not considered a “regulation” under Executive Orders 12866 and 13563. Accordingly, it is exempt from review by the Office of Management and Budget.

Regulatory Flexibility Act

Because this rule addresses a matter of agency organization, and therefore is not subject to the notice and comment requirements of the Administrative Procedure Act, it is also exempt from the requirements of the Regulatory Flexibility Act. Accordingly, a regulatory flexibility analysis is not required for this action, and none has been prepared.

Paperwork Reduction Act

This action is merely administrative in nature, and addresses a matter of agency organization. It does not contain a “collection of information” as that term is defined in the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

List of Subjects in 15 CFR Part 4

Freedom of information, Privacy.

Dated: October 28, 2015.

Catrina D. Purvis,
Chief Privacy Officer and Director for
Open Government,
Department of Commerce.

For the reasons set forth above, the Department of Commerce amends 15 CFR part 4 as follows:

PART 4 – DISCLOSURE OF GOVERNMENT INFORMATION

1. The authority citation for this part continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

2. Amend §4.10 by revising paragraphs (b)(1) and (c) to read as follows:

§4.10 Appeals from initial determinations or untimely delays.

* * * * *

(b)(1) Appeals, other than appeals from requests made to the Office of Inspector General, shall be decided by the Assistant General Counsel for Litigation, Employment, and Oversight. Written appeals should be addressed to the Assistant General Counsel for Litigation, Employment, and Oversight, at U.S. Department of Commerce, Office of the General Counsel, Room 5875, 14th and Constitution Avenue NW., Washington, DC 20230. An appeal may also be sent via facsimile at 202-482-2552. For a written appeal, both the letter and the appeal envelope should be clearly marked “Freedom of Information Act Appeal.” Appeals may also be submitted electronically either by email to *FOIAAppeals@doc.gov* or online at the FOIAonline Web site, *http://foiaonline.regulations.gov*, if requesters have a FOIAonline account. In all cases, the appeal (written or electronic) should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, the Assistant General Counsel for Litigation, Employment, and Oversight ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester's appeal.

* * *

(c) Upon receipt of an appeal involving records initially denied on the basis of FOIA exemption (b)(1), the records shall be forwarded to the Deputy Assistant Secretary for Security (DAS) for a declassification review. The DAS may overrule previous classification determinations in whole or in part if continued protection in the interest of national security is no longer required, or no longer required at the same level. The DAS shall advise the Assistant General Counsel for Litigation, Employment, and Oversight, the General Counsel, the General Counsel to the Inspector General, or Deputy Inspector General, as appropriate, of his or her decision.

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§§ 4.23, 4.25, 4.28, and 4.29 and Appendix B [Amended]

3. In addition to the amendments made above, in 15 CFR part 4, remove the words “Assistant General Counsel for Administration” and add, in their place, the words “Assistant General Counsel for Litigation, Employment, and Oversight” in the following places:

- a. Section 4.23(d)(2);
- b. Section 4.25(a)(2) and (g)(3)(ii);
- c. Section 4.28(a)(1)(ii) and (a)(2)(ii)(D);
- d. Section 4.29(b), (c), (e), (g)(1), (h), and (i); and
- e. Appendix B.

[FR Doc. 2015-28712 Filed: 11/12/2015 8:45 am; Publication Date: 11/13/2015]